

WRIT PETITION NO. 225 OF 2003

M/s. Rimula Ore Carriers,
a partnership firm,
having its office at
Cazgomfem, Tembim,
Curtorim, Salcete, Goa,
represented herein by its
partner Mr. Johann
Fernandes, major in age,
businessman, r/o
Curtorim, Salcete, Goa.

... Petitioner

Versus

Shri Shriram S. Malik,
major in age, businessman,
carrying on business with
name Siddarth Ore Carriers,
with office at Rakhi Apart-
ments, 1st Floor, Near Uma
Service Centre, Vasco da
Gama, Goa.

... Respondent.

Shri S. D. Lotlikar, Senior Advocate with Shri Zeller
D'Souza, advocate for the petitioner.

Shri S. M. Lotlikar, advocates for the respondent.

CORAM : F. I. REBELLO, J.

DATE OF RESERVING THE JUDGMENT : 6th June, 2003.

DATE OF PRONOUNCING THE JUDGMENT : 12th June, 2003.

JUDGMENT

Rule. Respondent waives service. Heard
forthwith.

2. This is a petition directed against the Order
of the Additional District Judge dated 13th May, 2003,
passed in Miscellaneous Civil Appeal No.41/2003. By that
Order which was an appeal under Section 17 of the
Arbitration and Conciliation Act, 1996, the learned

Additional District Judge stayed the Orders dated 10th April, 2003 and 2nd May, 2003, till further orders. When the petition was filed before this Court at an interim stage, interim relief was granted that had the effect of staying the Order dated 13th May, 2003. In proceedings pending before the Arbitrator, the learned Arbitrator by his Order of 10th April, 2003, had granted an interim relief, subject to the petitioner herein depositing Rs.26,00,000/-, which was the amount of the defaulted instalments under the Hire Purchase Agreement alongwith interest at 21% for the instalments that have fallen due. The petitioner herein was directed to furnish the address as set out in the Order. There are some other directions. The petitioner having deposited the sum of Rs.26,00,000/-, a further Order dated 22nd May, 2003, was passed and consequently, the respondent herein was directed to withdraw his letters of notice to the Captain/Deputy Captain of Ports as also letter to the Oriental Insurance Company, Vasco da Gama. The respondent was also directed to withdraw the revocation of the power of attorney granted to the petitioner on 29th July, 2000.

At the hearing of the petition, it is contended that the Order of the Appellate Court interfering with the Order of the learned Arbitrator would disclose an error apparent on the face of the record as at the interim stage and more specifically when the petitioner was plying the barge and after having deposited the money, no order could

have been made directing the petitioner not to operate the barge.

On the other hand, on behalf of the respondent, it is contended that the contract was determinable. The contract has been determined and in these circumstances the learned Arbitrator could not have issued directions of mandatory nature. Under Clause 30 it was open to the respondent to either terminate the contract or seek recovery of the money, the respondent chose to terminate the contract. In these circumstances it is contended that the learned Appellate Court was right in interfering with the order and consequently no interference is called for.

3. At the Bar, both the learned counsel inform that the appeal has been heard and posted for orders sometime next week. The only issue is that subsequent to the order of this Court, whether this Court should interfere with the impugned Order. The purpose of interim relief is to secure the property from danger or waste. In the present case, the issue is open before the Arbitrator for final decision. The petitioner herein has deposited the entire price alongwith interest. The Appellate Court has interfered with those orders and directed that the barge be not operated and a Surveyor be appointed. In my opinion, considering the matter has been heard and without going into the issue on merits, justice of the matter would required

that the petitioner herein, till such time as the learned Appellate Court disposes of the appeal, acts as a Receiver of the suit barge, but without royalty, considering that a sum of over Rs.26,00,000/- has been deposited. If, ultimately, the learned Arbitrator comes to the conclusion that the petitioner is not entitled to possess the barge, it will be open to the learned Arbitrator to work out the damages which the petitioner would be entitled to.

In the light of that, the following Order;-

The interim relief granted by this Court by Order dated 15th May, 2003, to continue till the hearing and final disposal of the appeal before the learned Additional District Judge, however on the condition that the petitioner will run and/or operate the barge as a Receiver of the court but without royalty. The learned Additional District Judge to decide the matter uninfluenced by whatever observations made by this Court, or directions issued. This order is purely of interim nature pending the disposal of the Appeal before the Additional District Judge.

Rule made absolute accordingly, with no order as to costs.

F. I. REBELLO J.